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## **REVISED EUROPEAN SOCIAL CHARTER**

## **REPLIES TO SUPPLEMENTARY QUESTIONS**

8<sup>th</sup> National Report on the implementation of  
the Revised European Social Charter

submitted by

**THE GOVERNMENT OF NORWAY**

((Articles 17 and 31  
for the period 01/01/2003 – 31/12/2009))

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Report registered by the Secretariat on 6 October 2011

**CYCLE 2011**



Council of Europe  
Secretariat General  
Att. Régis Brillat  
F-67075 Strasbourg Cedex  
France

Your ref  
ESC 143 NC/JW

Our ref  
11/3156

Date  
05.10.2011

**8th Norwegian report on the implementation of the Revised European Social Charter -  
Questions in respect of the 8th report**

Reference is made to your letter 8 July 2011 regarding questions in respect of the 8<sup>th</sup> report from Norway on the implementation for the Revised European Social Charter.

We can give you the following information in this regard:

**Article 17§1**

**1. What is the maximum length of imprisonment and pre-trial detention for young offenders?**

There is reason to note that the age of criminal responsibility in Norway is 15 years. Between the ages of 15 and 18 offenders are criminally responsible and subject to the ordinary provisions of criminal law, but with certain modifications due to their young age. Furthermore, they have special rights that must be protected even when they commit a crime.

The current Norwegian General Civil Penal Code of 1902<sup>1</sup> has no general provision that states that only limited use may be made of prison sentences in respect of young offenders. However, case law shows that both the prosecuting authority and the courts attach weight to low age as an extenuating factor.

The new Penal Code of 2005 establishes in statutory form the condition that minors can only be sentenced to a term of imprisonment when it is “particularly necessary”, see section 33. This provision has not yet entered into force, but nevertheless reflects the legislature’s will, as the Supreme Court has also chosen to emphasise (page 252 of the 2007 Norwegian Supreme Court Reports). The first judgment delivered stated that the provision provides an updated expression of the legislature’s view, which should have relevance even before the Act enters into force. The use of alternative penal sanctions for juveniles has been discussed lately in

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<sup>1</sup> <http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf>

several Supreme Court decisions. In this connection, it may be mentioned that there has been a trend towards increased use of community sentences, even in the case of serious offences.

Under applicable law, the maximum penalty, also for minors, is imprisonment for a term of 21 years. In practice, however, prison sentences of that length are not used. The 2005 Penal Code reduces the maximum penalty to 15 years in cases where minors have committed an offence, see section 33. Furthermore, the preparatory works are predicated on the fact that the provisions of the Convention on the Rights of the Child (CRC) regarding consideration of the child's best interest, and that imprisonment must only be used for the shortest possible period of time, will limit the length of the prison sentence that can be imposed. Figures from Statistics Norway show that 115 young people between 15 and 17 years of age were sentenced to immediate imprisonment in 2009. A majority of offenders aged between 15 and 17 who are sentenced to immediate imprisonment are given sentences of less than 90 days. In 2009, 66 out of 115 sentences of immediate imprisonment that were imposed on juveniles consisted of imprisonment for 90 days or less.

Section 183 of the Criminal Procedure Act<sup>2</sup> provides that if the prosecution authority wishes to have a person placed in detention, the person must be brought before the district court as soon as possible and no later than three days following the arrest. This provision is currently under revision.

Pursuant to section 185 of the Criminal Procedure Act, the Court shall fix a specific time-limit for the custody if it decides to remand a charged person in custody if the main hearing has not already begun. The time-limit shall be as short as possible and must not exceed four weeks. It may be extended by order up to four weeks at a time. If the nature of the investigation or other special circumstances indicates that a review of the order after four weeks will be pointless, the Court may fix a longer time-limit. If the main hearing has begun when the person charged is remanded in custody or when the time-limit for the custody expires, the person charged may be kept in custody until judgement is delivered.

If an application for extended custody is made, the prosecuting authority shall state when the investigation in the case is expected to be completed. The date shall be entered in the Court record. The prosecuting authority shall also give a brief account of the investigation that has been carried out since the previous Court sitting and of what investigation remains to be done, cf. second paragraph of the said provision.

According to section 3-1 of the Police Cell Regulations, a prisoner must be transferred from a police cell to a prison cell within two days of their arrest unless this is impossible for practical reasons. If a transfer occurs later, the reason must be noted in the custody log. Although the regulations impose no absolute prohibition against holding prisoners in police cells for more than two days, the conditions for exemption from the rule are strict.

The Norwegian Government has recently presented a legislative proposal concerning juveniles in conflict with the law, cf. Prop. 135 L (2010-2011) Endringer i straffeloven, straffeprosessloven, straffegjennomføringsloven, konfliktrådloven m.fl. (barn og straff). One

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<sup>2</sup> <http://www.ub.uio.no/ujur/ulovdata/lov-19810522-025-eng.pdf>

of the issues in the proposal is to introduce shorter time limits for transfer of minors from police cells to regular prisons.

## **2. Are young offenders always detained and imprisoned separately from adults?**

Norway has made a reservation regarding International Covenant on Civil and Political Rights (1966) article 10, paragraphs 2(b) and 3, regarding the obligation to keep young criminal offenders and convicted persons separated from adult prisoners. This obligation is reflected in the CRC article 37 c; where it is stated that ‘...every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...’ A guiding principle of the Norwegian Correctional Services is that a convicted person should serve his/her sentence in close proximity to his/her home, cf. section 11 first paragraph in the Execution of Sentences Act. Furthermore, there are very few juveniles in Norwegian prisons (usually around ten individuals). If this principle of proximity is to be adhered to, along with the juveniles’ separation from the adult population, the result would place them in almost total isolation. In our view, such a solution will not be in the child's best interest, and, hence, unsatisfactory. Basically, this is the reason why the reservation is being upheld.

Nevertheless, Norway recognises that challenges remain regarding juveniles in prison, particularly regarding sentences served together with older prisoners, sentences served far away from their homes and their families, that juveniles to an unacceptable extent are being isolated in their prison cells, as well as the fact that juveniles are not being sufficiently followed-up after being released.

To avoid the occurrence of juveniles serving their sentences in prisons together with adults, Norway is presently establishing separate prison units for young offenders. One unit is already operational (2010). These facilities will contain small flats providing accommodation for the offenders’ families to spend time with them while they serve their sentence. Moreover, the juveniles will, to a much greater extent than in normal prisons, be able to partake in the prison community. Multidisciplinary follow-up programs will also be provided upon release. There is reason to stress that by such actions Norway does not wish to facilitate greater juvenile imprisonment than today. On the contrary, the goal is to be able to provide a better alternative than general imprisonment in those cases where the penalty of a crime cannot be paid in any other way than through service of a sentence in prison.

Payment of a penalty of crime in a child welfare institution as well as mediation board solutions are both commendable alternatives to prison service with regard to this group. Additionally, the sitting Government has announced an escalation of the frequency in using community sentences. In this connection it should be noted that one of the aims of the above-mentioned proposals for law amendments regarding juveniles in conflict with the law, is to use other measures than prison, also when serious and/or repeated crime has been committed by young offenders.

In accordance with CRC article 37 (b), it is the Norwegian Government’s opinion that prisons should only be a measure of last resort and alternative sanctions should be used to the extent possible. As a device to pursue this ambition, a new sanction called “Juvenile Sentence” has been proposed. The said sanction is based on Restorative Justice Principles and includes a Conferencing Meeting and a strict follow-up plan. The offender’s private network as well as different public institutions such as school, the Child Welfare Authorities, Health Care

services etc. will be involved, and the follow-up plan will be individually tailored for each offender according to his or her needs. The offender will be obliged to work actively to abstain from committing crime as well as from using alcohol and drugs. The aspiration is that the said sanction will contribute to decrease the number of minors in prison. “

**Article 31§3**

**1. Are non-nationals lawfully residing or working in Norway eligible for housing benefits?**

Non-nationals lawfully residing in Norway and inscribed in the national register are eligible for housing benefit.

We hope this will clarify the issues in question.

Yours sincerely,

Eli Mette Jarbo  
Deputy Director General

Mona Sandersen  
Senior Adviser

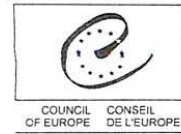
# APPENDIX

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DIRECTORATE OF MONITORING

*HEAD OF THE DEPARTMENT  
OF THE EUROPEAN SOCIAL CHARTER,  
EXECUTIVE SECRETARY  
OF THE EUROPEAN COMMITTEE OF SOCIAL  
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ESC 143  
NC/JW

Ms Eli Mette Jarbo  
Deputy Director General  
Royal Ministry of Labour  
PO Box 8019 Dep  
0030 Oslo  
Norway

Strasbourg, 8 July 2011

Dear Ms Jarbo

The European Committee of Social Rights is currently examining the 8<sup>th</sup> report from Norway on the Revised European Social Charter and has instructed me to forward to you the enclosed questions concerning Articles 17§1 and 31§3.

The Committee would be grateful if you could reply to these questions before 15 September 2011 in order to allow the information to be taken into account in Conclusions 2011.

Yours sincerely,

Régis Brillat

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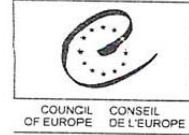
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**  
**COMITÉ EUROPÉEN DES DROITS SOCIAUX**

8 July 2011

**Questions in respect of the 8th report from Norway**

**Article 17§1**

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2. Are young offenders always detained and imprisoned separately from adults?

**Article 31§3**

1. Are non-nationals lawfully residing or working in Norway eligible for housing benefits?